

Claimant alleges accidental injury on or about June 5, 2002, while lifting heavy basement forms which weighed up to 100 pounds. Claimant testified he suffered a sudden onset of pain, but continued working for respondent for several months thereafter. Claimant testified that he talked to Roger Veach, his supervisor, about the problem, but did not file a workers' compensation claim. Mr. Veach denied being told that claimant suffered accidental injury, but acknowledged claimant had ongoing back problems. Mr. Veach also agreed that claimant, at times, would let out a yell at work and would stand for a short period of time, holding his back. Claimant would then go back to work.

Claimant's wife, Tammy Boyett, testified that she heard claimant and Mr. Veach, on several occasions, discuss the fact that claimant was having back problems. Claimant had advised her that he had suffered his back injury while lifting a form at work. She was more able to pinpoint the date of accident than either of the other witnesses, as she testified claimant told her approximately one week before her June 17, 2002 sonogram, that he had hurt his back at work, lifting the form.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹

K.S.A. 44-520 requires that notice of accident be provided to the respondent within ten days of the accident. In this instance, the conflict between claimant and his supervisor, Mr. Veach, is supplemented by the testimony of claimant's wife. Additionally, the Administrative Law Judge did have the opportunity to observe all three witnesses testify at hearing. The Board finds that claimant has proven for preliminary hearing purposes that he provided notice of accident to respondent in a timely fashion pursuant to K.S.A. 44-520. The Order of the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated April 2, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2003.

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Matthew S. Crowley, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Director, Division of Workers Compensation

¹ K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).